

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION

THIS DOCUMENT RELATES TO:
State of California, *ex rel.* Ven-A-Care v.
Abbott Laboratories, Inc., *et al.*
CASE #: 1:03-cv-11226-PBS

) MDL No. 1456
) Master File No. 01-12257-PBS
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) Judge Patti B. Saris
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STATE OF CALIFORNIA'S AND *QUI TAM* PLAINTIFF'S
STATUS REPORT-FEBRUARY 1, 2006

The undersigned counsel, on behalf of plaintiff STATE OF CALIFORNIA ("CALIFORNIA") and *qui tam* plaintiff VEN-A-CARE OF THE FLORIDA KEYS, INC. ("VEN-A-CARE" or "*qui tam* plaintiff"), hereby submit the attached Status Report to the Court in accordance with the Court's June 17, 2004 Procedural Order.

Respectfully submitted,

BILL LOCKYER
Attorney General for the State of California

Dated: February 1, 2006

By: /s/ Nicholas N. Paul
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Dated: February 1, 2006

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MDL 1456 Status Report
State of California, *ex rel.* Ven-A-Care v. Abbott Laboratories, Inc., *et al.*
Case No.: 1:03-cv-11226-PBS

First Amended Complaint in Intervention

Plaintiffs filed a First Amended Complaint in Intervention on August 25, 2005.

Motion to File Unredacted Exhibits Under Seal

On August 25, 2005, plaintiffs filed a motion for leave to file unredacted Exhibits under seal. The Exhibits are Exhibits A-K and Exhibits M-R to the First Amended Complaint in Intervention. Redacted versions of such Exhibits were filed (and served on existing parties through Verilaw) on August 25, 2005, along with the First Amended Complaint in Intervention. The Court granted such motion, and the unredacted Exhibits have been filed under seal.

State of California's Election to Decline

On September 9, 2005, the State of California filed a motion for leave to file "State of California's Election to Decline as to Certain Defendants and Allegations" ("Election to Decline") under seal. The Court granted such motion on September 14, 2005. The Election to Decline was filed under seal on September 14, 2005.

Qui Tam Plaintiff's Notice of Election/Dismissal

On or about September 12, 2005, the *qui tam* plaintiff filed a motion for leave to file its "Notice of Election to Proceed and Notice of Dismissal" ("Notice of Election/Dismissal") under seal. The Court granted such motion, and the Notice of Election/Dismissal was filed under seal on September 14, 2005.

Case Management Order (CMO) 18

On December 13, 2005, the Court issued CMO 18, providing a briefing schedule for the served Defendants' motions to dismiss, as well as rules regarding the conduct of discovery and

document access during the period required to brief and decide the motions to dismiss.

Motions to Dismiss

On January 17, 2006, the served Defendants filed a Joint Motion to Dismiss Plaintiffs' First Amended Complaint in Intervention. In addition, Abbott Laboratories Inc., B. Braun of America Inc. and ZLB Behring LLC filed individual motions to dismiss.

Oppositions to Motions to Dismiss

Plaintiffs anticipate filing their Oppositions to the joint and individual Motions to Dismiss on or before March 3, 2006, in accordance with CMO 18.

Additional Miscellaneous Filings

(1) On January 18, 2006, Plaintiff California filed a Motion to File under Seal its' Ex Parte Application for a partial lifting of the seal. The Court granted that Motion on January 27, 2006, but has not issued an order on the underlying request for a partial lifting of the seal.

(2) On January 27, 2006, Plaintiff California filed a Motion to File Under Seal a Stipulation and Proposed Order to Extend Seal of Relator's First Amended Complaint as to certain specific Defendants. The Court has not ruled on the Motion to File Under Seal, nor the Stipulation and Proposed Order referred to therein.

Anticipated Filings

California may file additional motions/pleadings, under seal when necessary, to dispose of the state's interests in matters remaining under seal. Plaintiffs will request a Status Conference and the entry of a Case Management Order by a motion to be filed after the Court has adjudicated the served Defendants' joint and individual Motions to Dismiss. In addition, the Relator will file its Second Amended Complaint with respect to the remaining Defendants and claims that have not been dismissed and on which California has thus far declined to intervene.

CERTIFICATE OF SERVICE

I, Nicholas N. Paul, hereby certify that on February 1, 2006, I caused a true and correct copy of the foregoing, **STATE OF CALIFORNIA'S AND *QUI TAM* PLAINTIFF'S STATUS REPORT-FEBRUARY 1, 2006**, to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

Dated: February 1, 2006

/s/ Nicholas N. Paul

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